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# Request for Continued Examination (RCE) Transmittal

Address to:  
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P.O. Box 1450  
Alexandria, VA 22313-1450

Application Number	10/698,254
Filing Date	10/31/2003
First Named Inventor	Steven A. Foote
Art Unit	2856
Examiner Name	Helen C. Kwok
Attorney Docket Number	H0003728

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application. Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

a. ☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

i. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on \_\_\_\_\_

ii. ☐ Other \_\_\_\_\_

b. ☒ Enclosed

i. ☐ Amendment/Reply

iii. ☒ Information Disclosure Statement (IDS)

ii. ☐ Affidavit(s)/ Declaration(s)

iv. ☐ Other \_\_\_\_\_

2. **Miscellaneous**

a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of \_\_\_\_\_ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

b. ☐ Other \_\_\_\_\_

3. **Fees**

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

The Director is hereby authorized to charge the following fees, any underpayment of fees, or credit any overpayments, to Deposit Account No. \_\_\_\_\_. I have enclosed a duplicate copy of this sheet.

a. ☐ RCE fee required under 37 CFR 1.17(e)

ii. ☐ Extension of time fee (37 CFR 1.136 and 1.17)

iii. ☐ Other \_\_\_\_\_

b. ☐ Check in the amount of \$ \_\_\_\_\_ enclosed

c. ☒ Payment by credit card (Form PTO-2038 enclosed)

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED			
Signature	<i>Charles J. Rupnick</i>	Date	May 6, 2005
Name (Print/Type)	Charles J. Rupnick	Registration No.	43,088

CERTIFICATE OF MAILING OR TRANSMISSION	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.	
Signature	<i>Charles J. Rupnick</i>
Name (Print/Type)	Charles J. Rupnick
Date	May 6, 2005

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.  
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Charles J. Rupnick

(Typed or printed name of person mailing)

(Signature of Person Mailing)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No. : 10/698,254  
Inventor(s) : Steven A. Foote, et al.  
Filed : October 31, 2003  
TC/A.U. : 2856  
Examiner : Helen C. Kwok

Confirmation No.: 2943

Docket No. : H0003728  
Customer No. : 00128

Mail Stop: **RCE**  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

**Petition Under 37 C.F.R. § 1.313 to Withdraw Application From Issue**

Sir:

The Applicant hereby petitions under 37 CFR § 1.313 (c)(2) for withdrawal of the instant application from issue after the issue fee has been paid for consideration of a request for continued examination in compliance with 37 C.F. R § 1.114.

Remarks/Arguments begin on page 2 of this paper.

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Page 1 of 2

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**CERTIFICATE OF MAILING**

Date of Deposit: July 14, 2005

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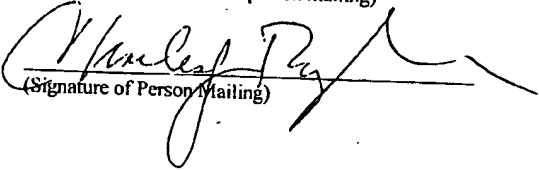
Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450.

Charles J. Rupnick

(Typed or printed name of person mailing)

  
(Signature of Person Mailing)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent No.: 6,874,363  
Issue Date : April 5, 2005  
Serial No. : 10/698,254  
Inventor(s) : Steven A. Foote, et al.  
Filed : October 31, 2003  
TC/A.U. : 2856  
Examiner : Helen C. Kwok

Confirmation No.: 2943

Docket No. : H0003728  
Customer No. : 00128

Mail Stop 16  
Director of the USPTO  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Request Under 37 CFR 1.26(a) for Refund of Fees**

Sir:

The Applicant hereby requests under 37 CFR 1.26(a) for refund of Request for Continued Examination (RCE) fees in the amount of \$790 and Petition for Withdrawal from Issue fees in the amount of \$130 both paid by mistake in the above captioned application.

Total request for refund amount is \$920.

Remarks/Arguments begin on page 2 of this paper.

Serial No. 10/698,254

Request dated July 14, 2005

Reply to Dismissal of Petition mailed on June 13, 2005

### REMARKS/ARGUMENTS

The Applicant is permitted to file a request for a refund of any fee paid by mistake or in excess of that required.

The Applicant mistakenly filed a request for continued examination (RCE) on May 6, 2005, for consideration of an Information Disclosure Statement. The request fee was paid in the amount of \$790, as set forth by 37 C.F.R. § 1.17(e), by credit card payment form. The request was denied for on May 9, 2005, for failure to file the request before payment of the issue fee when no petition under 37 CFR § 1.313 had been granted.

The Applicant mistakenly filed a Petition To Withdrawal Application From Issue on May 24, 2005, for reconsideration of the denied request for continued examination (RCE) of May 6, 2005. The petition fee was paid in the amount of \$130, as set forth by 37 C.F.R. § 1.17(h), by credit card payment form. The petition was Dismissed as moot on June 13, 2005, as not being received before the date of issue.

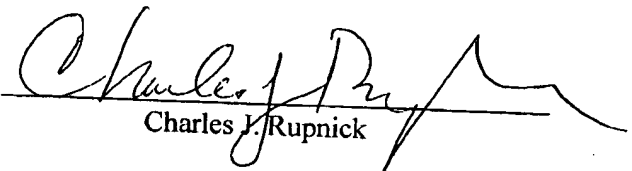
Thus, the Applicant mistakenly paid request (RCE) fees of \$790 and petition fees of \$130 after the date when such fees would have been effective.

The Applicant mistakenly paid fees of  $\$790 + \$130 = \$920$ . The Applicant hereby respectfully requests refund of such mistakenly paid fees in the total amount of \$920.

If the Examiner has questions or wishes to discuss any aspect of the case, the Examiner is encouraged to contact the undersigned at the telephone number given below.

Respectfully submitted,

Attorney:

  
Charles J. Rupnick

Registration No.:	43,068
Date:	July 14, 2005
Post Office Address:	PO Box 46752 Seattle, WA 98146
Telephone:	(206) 439-7956
Facsimile:	(206) 439-3223



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*T. Carlson*

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JUN 13 2005

**OFFICE OF PETITIONS**

In re Patent No. 6,874,363  
Issue Date: April 5, 2005  
Application No. 10/698,254  
Filed: October 31, 2003  
Attorney Docket No. H0003728

ON PETITION

This is a decision on the petition filed May 27, 2005, requesting withdrawal of the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED** as moot.

A petition under 37 CFR 1.313 must be received and granted by an appropriate official in the Office of Petitions within sufficient time to avert issuance of an application into a patent. The above application issued into Patent No. 6,874,363 on April 5, 2005. The above petition was submitted on May 27, 2005, which is after issuance of the patent. Petitioner's attention is directed to 37 CFR 1.313(d), which states:

A petition under this section will not be effective to withdraw the application from issue unless it is actually received and granted by the appropriate officials **before the date of issue**. Withdrawal of an application from issue after payment of the issue fee may not be effective to avoid publication of application information.

Petitioner may request a refund of the petition fee and the request for continued examination fee by writing to the Office of Finance, Refund Section. A copy of this decision should accompany petitioner's request.

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

This matter is being referred to Files Repository.

*Karen Creasy*  
Karen Creasy  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

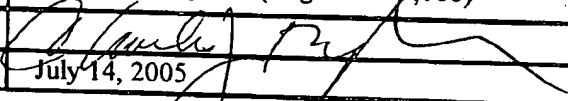
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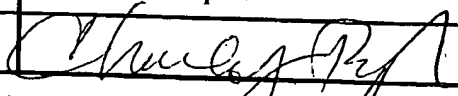
*Hal6/25/05*

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<b>TRANSMITTAL FORM</b> (to be used for all correspondence after initial filing)	Application Number	10/698,254 (US Patent 6,874,363)	
	Filing Date	October 31, 2003	
	First Named Inventor	Steven A. Foote	
	Art Unit	2856	
	Examiner Name	Helen C. Kwok	
Total Number of Pages in This Submission	4	Attorney Docket Number	H0003728

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input checked="" type="checkbox"/> Request for Refund (2 pages) <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Copy of Decision on Petition Return Receipt Postcard
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Charles J. Rupnick (Reg. No.: 43,068)
Signature	
Date	July 14, 2005

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Typed or printed name	Charles J. Rupnick
Signature	
Date	July 14, 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO in process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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